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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,746	04/03/2006	Mats Malmqvist	15116NP	5094
293 7590 10/16/2009 DOWELL & DOWELL P.C. 103 Oronoco St. Suite 220 Alexandria, VA 22314				
EXAMINER				
DOE, SHANTA G				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
10/16/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/538,746

**Applicant(s)**

MALMQVIST ET AL.

**Examiner**

SHANTA G. DOE

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3 and 6 is/are rejected.  
7) ☒ Claim(s) 4 and 5 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-85/86)  
Paper No(s)/Mail Date 4/3/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Inventor's Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: in the specification on page 2, paragraph 1, the specification contains the phrase "claim 1" and "claim 6". However, the applicant needs to replace the phrases "claim 1" and "claim 6" with the actual language of claim 1 and claim 6 respectively.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (US 5,942,432).

Regarding claim 1, Smith discloses a holder for microtitre plate (301) or an array of separate test tubes, characterized in that it comprises a first panel (311) provided with a recess for receiving each well (located on tube array plate 301) of the microtitre plate (301) or test tubes and a second panel (319), which together with the first panel (311) and three side walls form an inner space (309), wherein the fourth side comprises an

inlet (the arrow in fig 3 shows the flow of a fluid used to heat and cool the sample wherein the inlet is located in the bottom wall) for gas or liquid, whereby the gas or liquid entering the inner space (309) via the inlet leaves the inner space (309) via said recesses (follow the arrow that indicates the flow of heating fluid and one can see that the fluid exits the device via the recesses located in 311), along the outside of the wells (located in (301)) (see fig. 3 & 4; col. 4 lines 13-5).

Regarding claim 6, Smith discloses a method for cooling or heating samples contained in wells of a microtitre plate (301) or an array of separate test tubes, characterized by inserting the microtitre plate (301) or array of separate test tubes into a holder comprising a first panel (311) provided with a recess for receiving each well of the microtitre plate (301) or test tubes and a second panel (318), which together with the first panel and three side walls (5) form an inner space (309), wherein the fourth side comprises an inlet for gas or liquid, and letting gas or liquid enter said inner space (309) of the holder and further out through said recesses, along the outside of the wells (see fig. 3 & 4; col. 4 lines 13-5).

4. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothenberg (US 4,786,601).

Regarding claim 1, Rothenberg discloses a holder for microtitre plate or an array of separate test tubes, characterized in that it comprises a first panel provided with a

recess for receiving each well of the microtitre plate or test tubes and a second panel, which together with the first panel and three side walls form an inner space, wherein the fourth side comprises an inlet for gas or liquid, whereby the gas or liquid entering the inner space via the inlet leaves the inner space via said recesses (see the arrow that indicate the flow of heating fluid; one can see that the fluid exits along the outside of the wells). (see fig. 3 & 4 col. 1 lines 30 -68; col. 3 lines 39-60).

Regarding claim 2, Rothenberg discloses a holder according to claim 1, wherein the second panel is made up by the microtitre plate itself (see fig. 3 and 4).

Regarding claim 3, Rothenberg discloses a holder according to claim 1, wherein the second panel is a releasable lid (cover 52) (fig. 3; col. 3 line 47) .

Regarding claim 6, Rothenberg discloses a method for cooling or heating samples contained in wells of a microtitre plate or an array of separate test tubes, characterized by inserting the microtitre plate or array of separate test tubes into a holder comprising a first panel provided with a recess for receiving each well of the microtitre plate or test tubes and a second panel , which together with the first panel and three side walls form an inner space, wherein the fourth side comprises an inlet for gas or liquid, and letting gas or liquid enter said inner space of the holder and further out through said recesses, along the outside of the wells (see fig. 3 & 4 col. 1 lines 30 -68; col. 3 lines 39-60).

***Allowable Subject Matter***

5. Claims 4 and 5 are objected to as being dependent upon a rejected base claim (claim 1), but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 4, the prior art fails to disclose or suggest a holder according to claim 1 wherein at least one protrusion is provided on the first panel in order to secure a gap between the wells and the recesses.

Regarding claim 5, the prior art fails to disclose or suggest a holder according to claim 1, wherein at least one baffle is provided in front of the row of wells positioned closest to the inlet for gas or liquid.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANTA G. DOE whose telephone number is (571)270-3152. The examiner can normally be reached on Mon-Fri 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GSD

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1797